IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 439 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOPALBHAI MADHUSUDAN PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR HR PRAJAPATI for Appellant(s) : 1,
MS DARSHANA PANDIT, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 01/05/2007

ORAL JUDGMENT

1. Heard ld. Counsel Mr. Prajapati for the appellant accused and ld. APP Ms Darshana Pandit for the State. The present appeal is preferred by the appellant accused

under section 374 read with section 386 of CrPC assailing the legality and validity of the judgment and order of conviction and sentence dated 01.05.1999 passed by ld. Special Judge, Panch Mahals at Godhara in Special Sessions Case No. 4/1999. Vide impugned judgment, the appellant accused has been held guilty by the ld. Trial Judge for the offence punishable under section 3 of The Essential Commodities Act (hereinafter referred to as the EC Act) and sentenced him to undergo R/I for 3 Months and to pay a fine of Rs.5,000/, I/d to further undergo S/I for 1 month. According to Mr. Prajapati, the amount of fine has been paid.

2. The appellant has challenged the impugned judgment on various ground mentioned in the memo of appeal and ld. Counsel Mr. Prajapati appearing for the appellant accused has taken me through all these grounds and so also the judgment under challenge. He has drawn attention of the Court to the contents of the plea recorded by the ld. Trial Judge on 10.02.1999 and attempted to focus that the substantive charge against the accused was that he was responsible for a grave wrong as petrol worth 437 liters was found in excess in the tank at the time of checking. That number of irregularities found by the officer who had visited and inspected the petrol pump running in the name and style of M/s Manilal Mohanlal Petrol & Diesel

Pump on 24.03.1998 and for that a formal complaint was filed on 29.10.1998. Before filing of the complaint, statement of the person present i.e. servant of the appellant accused was recorded by the visiting officer and the accused was also asked to explain the contingency that has reflected in the statement given by his servant. The intimation was given to the servant and on two different occasions, the appellant accused had explained about the alleged irregularities that were noticed by the officer. According to Mr. Prajapati, when majority of the allegations were found to be not correct by the Highest Officer of the State i.e. Deputy Director (Civil Supplies), State of Gujarat, Gandhinagar and order of responsible officer was on record vide exh.20, the ld. Trial Judge ought not to have linked the accused with crime or with main substantive charge. The allegation against accused was that the stock of trade i.e. petrol was found in excess by 437 liters, but ultimately it came practically to “nil” because the accused had successfully explained stock situation noted by the visiting officer. The details were submitted by the accused in his explanation dated 04.04.1998 (exh.14) given to the Deputy Director. The explanation given by the accused was discussed by the Deputy Director before recording the ultimate finding in para-7 while dealing with irregularity No.7 mentioned in the notice to show cause which is at page 185-187 of the paper book (part of the

document exh.20). The close reading of the evidence led by the prosecution and explanation given by the accused to the Civil Supplies Officers, reveals that the accused was not responsible for short-fall of petrol beyond 4 liters. The responsible officer of the State while exonerating the accused has observed that the error in recording and maintaining Density Register is a case of sheer mistake and there is nothing on record to show that the density of either diesel or petrol was not according to the norms prescribed and the permissible limits qua variation. When the accused was not found responsible by the Highest Officer of the State namely the Deputy Director, the complainant ought to have disclosed these facts in his deposition and mainly in examination-in-chief itself because the finding given by the Deputy Director is subsequent to the date of the complaint.

3. There is much force in the arguments of ld. Counsel Mr. Prajapati for the appellant. The Court is inclined to adopt the reasons assigned by the Deputy Director while exonerating the accused from the allegations and explanation given by the accused dated 04.04.1998 (exh.14). It is possible for the Court to say that the ld. Trial Judge has grossly erred in evaluating the oral as well as documentary evidence. It emerges that oral evidence is not in conformity with the documents that

were available on record and the oral evidence ought not to have been given weightage when they were not in conformity with the documents relied upon by the prosecution side.

4. However, there is enough force in the arguments of ld. APP Ms. Pandit that the concerned officer in his report on which the appellant accused mainly relies, has held the accused responsible for improper maintenance of certain important registers which are required to be maintained by the owner and licence-holder under the authority to store and sell the petrol as well as diesel under the provisions of Motor Spirit & High Speed Diesel (Prevention of Malpractice in Supply & Distribution) Order, 1990. Therefore, at least the appellant accused should be held guilty for the said offences.

5. The alternative argument of Mr. Prajapati, ld. Counsel for the appellant is that when accused is not found responsible for grave charge and irregularities, then this Court should give benefit of doubt to the accused especially when he was not present when the petrol pump was inspected and miscellaneous/ minor work of maintenance of some registers were to be carried out by the servant present. The Court should think to give benefit of section 360 read with section 361 of CrPC also

as observed by the Apex Court in the case of **Hari Vallabh & Anr. V/s State of MP, (2005) 10 SCC 330.**

6. I have gone through the decision of the Apex Court in the case of Hari Vallabh (supra). In the cited decision, the Apex Court keeping the order of fine as it is, decided to give benefit of section 360 read with section 361 of CrPC to the accused who was held guilty of the offence punishable under section-7 of the EC Act. In the present case, the amount of fine of Rs.5000/ has been paid. The State has decided to confiscate 10% of the amount deposited by the accused which comes to Rs.4600/ and more. Qua the nature of irregularities that have been found proved, even punishment of fine could have been said to be adequate punishment because the alleged offence would fall in the category of the offences punishable under Clause (h) of sub-section 1 of section 3 punishable under section 7 of the EC Act. This Court in the case of State of **Gujarat v/s Ganpatbhai Premjibhai Joshi, 1998(2) GLH 787 (Coram: NJ Pandya, J),** has also observed that the accused held responsible under EC Act can be given benefit of section 360 read with section 361 of CrPC or advantage of the scheme under the Probation of Offenders Act and merely because minimum punishment is prescribed, it is always not necessary in all cases to deny such benefit. So, keeping ratio of the aforesaid

decisions in mind, the Court is inclined to extend benefit of section 360 read with section 361 of CrPC and the appeal requires to be allowed partly. The the offence punishable under section 3 of the EC Act other than the offence falling under clause (h) of sub-section 2 of section 3 of the EC Act, requires to be quashed and set aside, but the conviction for the offence punishable under Clause (h) of sub-section -2 of section 3 of the EC Act regarding improper maintenance of registers etc. requires to be upheld by confirming the order of imposition of punishment of fine of Rs.5000/. However, for the said offence, the quantum of substantive sentence requires to be reduced and altered to R/I for 1 Month instead of R/I for 3 months as imposed by the ld. Trial Judge and instead of asking the appellant accused to undergo imprisonment for the said offence, it would be in the interest of justice to extend benefit of section 360 read with section 361 of CrPC in favour of the appellant accused for the said offence.

7. In the result, the present Criminal Appeal is partly allowed. The impugned judgment and order of conviction and sentence passed by the ld. Sessions Judge, Panch Mahals at Godhara in Special Sessions Case No.4/1999 on 01.05.1999 for the offence punishable under section 3 of the EC Act other than the offence falling under clause

(h) of sub-section 2 of section 3 of the EC Act, is hereby quashed and set aside. However, the conviction for the offence punishable under Clause (h) of sub-section -2 of section 3 of the EC Act regarding improper maintenance of registers etc. is hereby upheld by confirming the order of imposition of punishment of fine of Rs.5000/. The order of imposition of fine is, therefore, not disturbed. However, for the said offence, the quantum of substantive sentence is altered to R/I for 1 Month, but the accused is hereby extended benefit of section 360 read with section 361 of CrPC for the said offence punishable under clause (h) of sub-section 2 of section 3 of EC Act.

The appellant-accused is directed to execute the bond of Rs.5,000/- (Rupees Five Thousand Only) of good conduct with one surety of the like amount for the period of one (1) year under the scheme of Section 360 read with Section 361 of Criminal Procedure Code, 1973. The appellant-accused shall execute the bond of good conduct before the concerned trial Court within a period of 30 days from the date of receipt of the copy of this writ, failing which the trial Court shall issue non-bailable warrant for arrest of the appellant-accused and he will be liable to serve the sentence imposed upon him by the trial Court. The order of substantive sentence shall remain under suspension till the period of bond of good

conduct i.e. for one year and shall become inoperative on completion of the period.

It is also further directed that in case of violation of any of the conditions of the bond of good conduct, the trial Court shall be at liberty to issue warrant for serving the sentence imposed by the concerned trial Court.

The Bail Bond executed by the appellant-accused shall stand discharged on the date on which the appellant-accused executes the bond of good conduct before the trial Court. Order and directions accordingly.

[C.K. BUCH, J]

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